

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JAMES O. STRUTHERS, Individually, and as Administrator of the Estate of ALICIA STRUTHERS, deceased,

Plaintiff,

v.

MERCK & CO., INC., a foreign Corporation; ANNE BRANDON, an individual; LAMONDE RUSSELL, an individual; and fictitious defendants, et al, etc.,

Defendants.

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CV 2:06-cv-127-MHT

AMENDED NOTICE OF REMOVAL

Comes now Defendant Merck & Co., Inc. ("Merck"), and pursuant to this Court's Order of February 14, 2006 (Doc. 8), amends its previously-filed Notice of Removal (Doc. 1) to more specifically plead federal jurisdiction (diversity of citizenship) for purposes of removal.

(1) There is complete diversity as between Plaintiff James O. Struthers, his decedent, Alicia Struthers, and Merck, the only properly joined defendant.

(2) Plaintiff James O. Struthers is a citizen of the state of Alabama. Compl. at ¶2. A copy of the Complaint itself (without exhibits) is attached hereto as Exhibit A¹. According to the Complaint, Plaintiff's decedent, Alicia Struthers, was a citizen of the state of Alabama at the time of her death. Compl. at ¶3; see 28 U.S.C. § 1332(c)(2).

(3) Merck is, and was at the time this suit was commenced, a corporation organized under the laws of the state of New Jersey with its principal place of business in New Jersey. It is, therefore, a citizen of New Jersey for purposes of determining diversity. See 28 U.S.C. § 1332(c)(1).

(4) Merck adopts and incorporates herein each and every other averment set forth in its Notice of Removal (Doc. 1).

WHEREFORE, Merck respectfully amends its previously-filed Notice of Removal to adequately address the decedent's citizenship and thereby establishes the existence of complete diversity of citizenship for purposes of this action.

DATED this 23rd day of February, 2006.

s/ Richard B. Garrett

Richard B. Garrett
Bar Number: (ASB-0782-A29R)

¹ A complete copy of the Complaint, with exhibits, is attached as Exhibit A to the Notice of Removal.

Mike Brock

Bar Number: (ASB-5280-B61R)

F. Chadwick Morriss

Bar Number: (ASB-8504-S75F)

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2006, I electronically filed the foregoing with the Clerk of the court using CM/ECF system which will send notification of such filing to the following: J. Paul Sizemore.

s/Richard B. Garrett

COUNSEL